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Supreme Court, U.S.
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No. _____

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In the Supreme Court of the United States

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF COMMERCE AND ITS DIRECTOR AND MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, RONALD E. RUSSELL AND JOHN L. O'DONNELL,

Petitioners,

v.

YELLOW TRANSPORTATION, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

Michael A. Cox
Attorney General

Thomas L. Casey
Solicitor General
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
(517) 373-1124

David A. Voges
Michael A. Nickerson (P25138)
Assistant Attorneys General
Attorneys for Petitioners

QUESTIONS PRESENTED

Under the Single State Registration System, 49 USC 14504(c)(2)(B)(iv)(III), a State is authorized to charge a fee "that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." In September, 1991, the Petitioners State of Michigan, *et al* mailed renewal registration forms to the Respondent charging $10 per vehicle for the 1992 registration year. In October, 1991, the Petitioners collected those registration fees. The question presented is whether such fees were "collected or charged as of November 15, 1991" in accordance with 49 USC 14504(c)(2)(B)(iv)(III).

PARTIES TO THE PROCEEDING

Petitioners are the State of Michigan, Michigan Department of Treasury and its State Treasurer, Michigan Department of Commerce and its Director and Michigan Public Service and its Commissioners, John G. Strand, Ronald E. Russell, and John L. O'Donnell.

Respondent is Yellow Transportation, Inc.

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The July 22, 2003 opinion of the Michigan Court of Appeals (Pet. App. 3a-21a) is reported at 257 Mich App 602; 669 NW2d 553 (2003). The April 9, 2004 order of the Michigan Supreme Court denying review (Pet. App. 1a-2a) is reported at 469 Mich 1026; 677 NW2d 331 (2004).

JURISDICTION

The Michigan Supreme Court issued an order on April 9, 2004 denying the State's Application for Leave to Appeal the July 22, 2003 Opinion of the Michigan Court of Appeals. This Petition for Certiorari is being filed within 90 days of the April 9, 2004 Order. The jurisdiction of this Court is invoked under 28 USC 1257(a).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The pertinent statutory provisions are reproduced in the Appendix. The statutes involved are 49 USC 11506 (Pet. App. 45a-47a) (since recodified as 49 USC 14504) and Mich Compiled Laws (MCL) 478.7(4). (Pet. App. 48a). The Constitutional provision involved is the Commerce Clause, US Const, Art I, Section 8, Clause 3.

STATEMENT

A. Introduction.

In *Yellow Transportation, Inc v Michigan*, 537 US 36 (2002), this Court held that it was unlawful for a state to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system. This Court's decision in *Yellow Transportation* left unresolved the issue of whether Congress in 49 USC 14504(c)(2)(B)(iv)(III) intended to cut off a state's right to continue charging and collecting interstate motor vehicle registration fees, authorized by state law, that were actually charged or collected under a fee system in place as of a November 15, 1991 federal statutory deadline, but related to the 1992 annual registration period.

Despite the fact that the Petitioners had complied with the plain language of 49 USC 14504(c)(2)(B)(iv)(III) by charging and collecting registration fees from Respondent prior to the November 15, 1991 deadline, the Michigan Court of Appeals, on remand, held that the Petitioners had not complied with the federal statute. *Yellow Transportation Inc. v State of Michigan (on remand)*, 257 Mich 602; 669 NW2d 553 (2003). (Pet. App.3a-21a.) The Michigan Supreme Court denied review, 469 Mich 1026; 677 NW2d 331 (2004). (Pet. App. 1a-2a.)

B. History of Proceedings.

Yellow Freight filed a complaint in the Michigan Court of Claims on March 24, 1995, against the State of Michigan, the Michigan Department of Treasury, and its State Treasurer, Michigan Department of Commerce, and its Director, the Michigan Public Service Commission, and John G. Strand, Ronald E. Russell, and John L. O'Donnell, Commissioners or former Commissioners of the Michigan Public Service Commission (collectively the "Petitioners").

Yellow Freight's complaint claimed that Petitioners had unlawfully collected registration fees on its trucks that traveled in interstate commerce, in violation of the federal Single State Registration System. 49 USC 14504(c)(2)(B)(iv)(III). Yellow Freight additionally claimed that Michigan's registration fees were a burden on interstate commerce and as such violated its civil rights pursuant to 42 USC 1983. Yellow Freight requested: (1) a refund of motor vehicle registration fees paid to the State of Michigan for the 1994 and 1995 registration years and (2) attorney's fees pursuant to 42 USC 1988.

Motions for summary disposition were filed by both the Petitioners and Yellow Freight. The Court of Claims, in an order dated March 13, 1996, denied State Defendants' Motion for Summary Disposition and granted Yellow Freight's Motion for Summary Disposition (Pet. App. 26a-29a.) The Court of Claims found that an ICC decision in *American Trucking Ass'ns – Petition for Declaratory Order – Single State Ins. Registration,* 9 ICC2d 1184 (1993) was to be accorded deference and, based on a finding in that case, the Court ordered that the registration fees for the years 1994 through 1996 be refunded to Yellow Freight (Pet. App. 28a-29a.) The Michigan Court of Claims then entered a judgment that ordered the payment of $99,580.00, plus interest, for fees paid for 1994, 1995 and 1996 (Pet. App. 24a-25a.) The Court of Claims, however, rejected Yellow Freight's claim for attorneys' fees. *Id.*

The Petitioners appealed the Court of Claims' decision to the Michigan Court of Appeals in Case No. 194703. Yellow Freight appealed the Court of Claims' decision with respect to attorney fees to the Court of Appeals in Case No. 195564.

On August 14, 1998, in a split decision, the Michigan Court of Appeals affirmed the Court of Claims. *Yellow Freight Systems, Inc v Michigan,* 231 Mich App 194; 585 NW2d 762 (1998). In the majority Opinion, the Court of Appeals held that the SSRS, specifically 49 USC 14504 was "not clear with respect to the pertinent period for fixing the fee levels." 231 Mich App at 201. The opinion further held that because 49 USC

14504(c)(2)(B)(iv)(III) did not reveal congressional intent, the Court should defer to an interpretation given by the ICC in *American Trucking Ass'ns supra.* 231 Mich App at 201. In that decision, the ICC stated that the term "fee charged or collected as of November 19, 1991" in 49 USC 14504(c)(2)(B)(iv)(III), concerns only fees charged or collected for the 1991 registration year. 9 ICC2d at 1195. The Court of Appeals found the ICC's decision to be reasonable and affirmed the Court of Claims' decision that relied upon it. 231 Mich App at 201. The Court of Appeals, however, rejected Yellow Freight's argument that it was entitled to attorney fees under 42 USC 1988, finding that "the denial of attorney fees was appropriate because the § 1983 claim was not viable against either the state agencies or the state officials." 231 Mich App at 207.

The dissenting Opinion found no ambiguity in 49 USC 14504(c)(2)(B)(iv)(III) but instead would have instructed the Court of Claims "to apply the statutory language according to its plain meaning and not according to the ICC's strained construction." 231 Mich App at 209. The dissent stated that the ambiguity that the majority found was the result of the majority's failure to accept the statutory wording at face value. 231 Mich App at 210. The dissent then concluded, "[w]hen a statute is clear on its face, judicial construction is unnecessary and inappropriate." *Id.*

The Petitioners filed an application for leave to appeal with the Michigan Supreme Court on December 9, 1998. That Court granted the application for leave to appeal in an order dated April 19, 2000. By Opinion decided May 15, 2001, the Michigan Supreme Court reversed the Court of Appeals in *Yellow Freight System, Inc v State of Michigan*, 464 Mich 21; 627 NW2d 236 (2001). Yellow Freight then filed a Petition for Certiorari with this Court which was granted. This Court then reversed the Michigan Supreme Court in *Yellow Transportation, supra.* In doing so, however, this Court specifically noted:

> The Michigan Supreme Court did not consider respondents' argument that the fees petitioner paid

> Michigan for the 1992 registration year were "collected or charged as of November 15, 1991." 49 U.S.C. § 14504(c)(2)(B)(iv)(III). Nor did that court reach the question whether Michigan had "canceled its reciprocity agreements with other States in 1989." Brief for the United States as *Amicus Curiae* 23. The only issue before this Court, therefore, is whether States may charge motor carrier registration fees in excess of those charged or collected under reciprocity agreements as of November 15, 1991.

This Court then remanded the case back to the Michigan Supreme Court for further proceedings not inconsistent with its opinion. *Yellow Transportation, supra*, 48.

By order dated March 11, 2003, the Michigan Supreme Court in *Yellow Freight System, Inc v Michigan,* 468 Mich 862; 659 NW2d 229 (2003) (Pet. App. 22a-23a) remanded this proceeding to the Court of Appeals with specific instructions that the lower Court consider the following issues:

> On remand the Court of Appeals is also DIRECTED to reconsider preserved arguments of the parties not directly addressed by this Court or the United States Supreme Court, including whether § 4005 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), 49 USC 11506(c)(2)(B)(iv)(III) (1994) [recodified at 49 USC 14504(c)(2)(B)(iv)(III) (Supp. V 1999)] allows defendant to set the State's registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. The parties are further DIRECTED to address the impact, if any, on this matter of representations made by the Solicitor General, in the *Amicus Curiae* Brief of the United States submitted to the United States Supreme Court, about proceedings before the United States Federal Highway Administration involving defendants State of Michigan and Michigan Public Service Commission and about the informality of Michigan's reciprocity policies. See 2001 US Briefs

(Lexis) 270 at pp. 23-4 (4/5/02 *Amicus Curiae* Brief of the United States). ...

On remand, a majority of the Michigan Court of Appeals affirmed the Court of Claims and held that despite the fact that the fees from Yellow Freight that were actually charged and collected by Petitioners prior to the November 15, 1991 federally mandated deadline they were not fees charged and collected by November 15, 1991 within the meaning of the federal statute. 257 Mich App 610-614. (Pet. App. 9a-12a.) The dissent, however, found the statutory phrase "collected or charged as of November 15, 1991" to be unambiguous and that Petitioners' actual charging and collecting of fees from Yellow Freight by November 15, 1991 complied with the federal statute. 257 Mich 616-618. (Pet. App. 16a-21a.) The Petitioners then sought review by the Michigan Supreme Court which was denied by Order dated April 9, 2004. *Yellow Transportation, Inc v Michigan,* 469 Mich 1026; 677 NW2d 331 (2004).

C. The federal Single State Registration System.

The resolution of the issue for which review is now sought is controlled by the language of the Single State Registration System (SSRS) that is set forth in 49 USC 14504.[1] To review this issue, it is necessary to understand the history of state regulation of motor carriers in the context of federal regulation.

Congress enacted the Motor Carrier Act of 1935, 49 USC 301 *et seq,* to provide for limited state regulation of interstate commercial transportation. Through various amendments, States were authorized to register interstate motor carriers, subject to supervision of the Interstate Commerce Commission (ICC). Under this registration program, which began in 1965, States

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[1] The SSRS was originally enacted into law in Section 4005 of the Intermodel Surface Transportation Efficiency Act of 1991. Pub L 102-240, 105 Stat 2146-2148, December 18, 1991 and codified as 49 USC 11506. The SSRS was subsequently re-enacted into law in Title I, § 103 of the ICC Termination Act of 1995, Pub L 104-88, 109 Stat 90 and recodified as 49 USC 14504.

choosing to participate were allowed to charge up to $10 for each vehicle registered. As proof of registration each state issued a stamp for each vehicle and these stamps were placed in the appropriate state spot on "bingo cards" carried in the cab of each vehicle.[2]

In Michigan, although the Michigan Public Service Commission (MPSC) had reciprocity agreements with several states and provinces pertaining to fees for motor carriers in interstate commerce, it did not issue bingo card stamps to interstate, foreign and exempt interstate motor carriers until the Michigan Legislature enacted 1988 PA 347 (Act 347), an amendment to the Michigan Motor Carrier Act, 1933 PA 254, MCL 475.1 *et seq.* Act 347, which became effective January 1, 1989, authorized the MPSC to begin charging regulatory fees[3] for each vehicle of interstate motor carriers. See, MCL 478.7(4). Additionally, under Act 347, the MPSC was permitted to enter into reciprocity agreements with other states that did not charge vehicles licensed in this state. Thus, beginning in the fall of 1989, the MPSC began issuing bingo card stamps for the registration year beginning 1990.

As of 1991, 38 States, including Michigan, participated in this registration system. Some, but not all, States entered into reciprocal arrangements under which they would discount or waive the fee for carriers based in each other's state. Most States used the motor carrier's principal place of business as the basis for determining reciprocity. Michigan, however, used the State in which the vehicle was base-plated, i.e. where it was registered or

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[2] Motor carrier vehicles may carry any number of different cab cards in the cab of each vehicle. Examples include cab cards for the International Registration Plan (IRP), the International Fuel Tax Agreement (IFTA), the "bingo stamp" card for vehicles that operate interstate, and cab cards for each state in which a vehicle may operate intrastate.

[3] As originally enacted, 1988 PA 347 provided that the MPSC was required to charge an annual fee equal to the charge levied on Michigan-licensed motor carrier vehicles in the other state. In 1989, the Michigan Legislature enacted 1989 PA 221 which amended this section by changing the annual registration fee on each vehicle to $10.00.

license plated, as the basis for determining reciprocity. Under this approach, for registration years 1990 and 1991, Michigan did not charge a fee for vehicles base-plated in a State that did not charge a fee for vehicles that were base-plated in Michigan.

Early in 1991, however, the MPSC determined that granting reciprocity using base-plating, rather than on place of business, was unduly complex, inefficient to administer, and inconsistent with the registration system used by virtually all other states. See Affidavit of Thomas R. Lonergan (Pet. App. 30a-44a). For example, vehicles operated by a single motor carrier but base-plated in several different States required several different calculations. *Id.* This significantly increased the possibility of error in reciprocity waivers. *Id.* Further, it became apparent to Michigan that it was one of a very few number of States using this system as opposed to the principal place of business as the basis for affording reciprocity.[4]

Contemporaneous with Michigan's determination that its reciprocity approach was difficult to administer and inconsistent with the approach of other States, Congress was considering legislation to streamline the state registration system. Recognizing that such legislation could include a mandatory uniform approach by participating states, the MPSC decided to terminate its use of base-plating as the method of determining reciprocity in favor of the "place of business" method of determining reciprocity to be consistent with other states (Pet. App. 30a-44a). Thus, early in 1991, Michigan brought its registration program in line with other state programs by adopting a revised reciprocity system based on the motor carrier's principal place of business. However, rather than implement this change mid-year, the MPSC decided, for the convenience of the industry, it would implement the change in the fall when the annual renewals occurred.

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[4] Other states that had used base-plating included Oklahoma, North Carolina and Indiana. All the foregoing states participate in the SSRS and now use principal place of business for determining reciprocity.

On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was enacted into law. Pub L 102-240, 105 Stat 1914-2207. Included within ISTEA was Section 4005, "Single State Registration System." 105 Stat 2146-2148. 49 USC 14504(c). The SSRS created a streamlined system for the registration of a motor carrier's vehicles engaged in interstate commerce. Previously, motor carriers were required to separately register their vehicles in each state that the vehicles operated in. The SSRS implemented a single state filing concept where a motor carrier would only file in and submit payment to the state in which it was based. That single filing and payment would cover vehicle registrations and fees for all states where the motor carrier operated vehicles. The state in which the motor carrier is based then sends the registrations and fees to all other states where such vehicles are operated.

Congress provided that the SSRS was to take effect by January 1, 1994. 105 Stat 2148.[5] It further provided that the ICC was to prescribe standards for the SSRS. With respect to the fee system under the SSRS, Congress provided, as follows at 49 USC 14504(c)(2)(B)(iv)(III):

> (B) Receipts; fee system. Such amended standards—
>
> > (iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) **will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State**

[5] The effective date of the SSRS was set forth in Section 4005 of ISTEA and codified as 49 USC 11506(c)(3) and may be found at 105 Stat 2148. Subsection (c)(3) of 49 USC 11506 was not included in the subsequent recodification that occurred in 1995 when 49 USC 11506 became 49 USC 14504.

> **collected or charged as of November 15, 1991**. [49 USC 14504(c)(2)(B)(iv)(III). (Emphasis added.)]

In September 1991, two months before the 45 USC 14504(c)(2)(B)(iv)(III) cut-off date of November 15, 1991, Michigan sent out renewal interstate cab (i.e. bingo) card stamp application forms to motor carriers for the 1992 registration year. On the back of the application form were instructions which stated that "[t]he cab card stamp fees are based on the state or province shown on the ICC certificate or permit as the carriers base of operations." The amount of fees appropriate to a motor carrier's fleet was determined by reference to an accompanying chart identifying cab card stamp fees.

Other than the implementation of Michigan's revised reciprocity system to conform with most other state programs, no changes were made to Michigan's registration fee collection program. Thus, no change was made to Michigan's registration fee of $10.00 per vehicle, as authorized by MCL 478.7(4). Nor was there any change to Michigan's long standing practice of collecting renewal fees in the fall for registration in the upcoming year, as is the practice with most, if not all, other States.[6] As a result of the change for determining reciprocity, some carriers, such as Yellow Freight System, Inc. that previously qualified for reciprocal fee discounts and fee waivers under the base-plating method for determining reciprocity were no longer afforded reciprocity, while others became eligible for reciprocity based on their place of business.

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[6] In fact, the single state registration system (SSRS) requires motor carriers to register in the fall preceding the registration year. The SSRS procedures manual states that registrants must file an application for registration and pay fees no earlier than August 1 and no later than November 30 of each year for the upcoming year.

D. Michigan fees charged to and collected from Yellow Freight.

In the calendar years 1990 and 1991, Yellow Freight had 3,730 vehicles base-plated in Illinois and Indiana. Under the base-plating method of determining reciprocity that Michigan had in effect at that time, Yellow Freight was not charged for those bingo card stamps as those states did not charge fees for vehicles based-plated in Michigan. See Affidavit of Thomas R. Lonergan (Pet. App. 32a). Yellow Freight, however, was charged for five vehicles that were base-plated in Oklahoma. *Id.*

After Michigan changed its method for determining reciprocity based on a company's principal place of business, Yellow Freight paid a $10.00 per vehicle registration fee for all its vehicles, as its principal place of business was in Kansas, and Michigan had no reciprocity with the State of Kansas. *Id.*

The application form charging the fees for the 1992 calendar year was mailed to Yellow Freight in September 1991. The application form was returned on October 3, 1991 with payment in full. Thus, the fees from Yellow Freight were charged and collected as of November 15, 1991. Since September 1991 Michigan has annually charged and Yellow Freight has annually paid a registration fee of $10.00 per vehicle for each vehicle operated in Michigan inasmuch as Yellow Freight's principal place of business remains in Kansas and Michigan has no reciprocity with that state.

REASONS FOR GRANTING THE PETITION

A. The issue of whether the Petitioners had complied with 49 USC 11504(c)(2)(B)(iv)(III) by actually charging and collecting registration fees from Respondent prior to the federally mandated deadline of November 15, 1991, is now properly before this Court in accordance with this Court's decision in *Yellow Transportation, Inc v Michigan*, 537 US 36 (2002).

In its decision in *Yellow Transportation, supra*, this Court limited its holding to the single issue of whether the Michigan Supreme Court had erred in determining that only Michigan's ten-dollar "generic" fee was relevant in determining what fee a state "collected or charged" as of November 15, 1991. *Yellow Freight Systems*, 464 Mich at 31. This Court held:

> The ICC's rule does not necessarily cap the aggregate fee paid by any particular carrier; rather, it simply requires States to preserve fees at the levels they actually collected or charged pursuant to reciprocity agreements in place as of November 15, 1991. [537 US at 48.]

The resolution of this precise question by this Court left unresolved a number of issues that had not been addressed by the Michigan Supreme Court. This Court observed:

> The Michigan Supreme Court did not consider respondents' argument that the fees petitioner paid Michigan for the 1992 registration year were "collected or charged as of November 15, 1991." 49 U.S.C. §14504(c)(2)(B)(iv)(III). Nor did that court reach the question whether Michigan had "canceled its reciprocity agreements with other States in 1989." Brief for the United States as *Amicus Curiae* 23. The only issue before this Court, therefore, is whether States may charge motor carrier registration fees in excess of those charged or collected under reciprocity agreements as of November 15, 1991. [537 US at 44.]

This observation mirrors that of the United States Solicitor General in the *amicus* brief filed on behalf of the United States:[7]

Following this Court's decision the Michigan Supreme Court remanded the case to the Michigan Court of Appeals and directed it to reconsider preserved arguments of the parties not previously addressed by either Supreme Court, as follows:

> On order of the Court, the November 5, 2002 mandate of the United States Supreme Court having reversed the May 15, 2001 opinion and judgment of this Court appearing at 464 Mich. 21; 627 N.W.2d 236 (2001), and that Court having remanded this cause for further proceedings not inconsistent with its opinion appearing at 537 US ___; 537 U.S. 36; 123 S. Ct. 371; 154 L. Ed. 2d 377 (2002), this matter is again considered, and, pursuant to MCR 7.316(A)(7), we VACATE our May 15, 2001 opinion and judgment and REMAND this case to the Court of Appeals for reconsideration in light of the United States Supreme Court's decision. On remand the Court of Appeals is also DIRECTED to reconsider preserved arguments of the parties not directly addressed by this Court or the United States Supreme Court, including

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[7] In its *amicus* brief, the United States Solicitor General observed:

> In particular, the Michigan Supreme Court has not addressed the question of whether ISTEA allows Michigan to set its registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. See Pet. App. 28a. (Michigan Court of Appeals holding that registration "fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991"). That question implicates not only the ICC's decision (see Pet. App. 26a-29a), but also issues about Michigan's ability to modify the base-plate reciprocity policy it followed until 1991 and to adopt a place-of-business reciprocity rule that better fits the Single State Registration System. Those issues should be addressed by the Michigan Supreme Court on remand.

> whether § 400 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), 49 USC 11506(c)(2)(B)(iv)(III) (1994) [recodified at 49 USC 14505(c)(2)(B)(iv)(III) (Supp. V 1999)] allows defendants to set the State's registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. The parties are further DIRECTED to address the impact, if any, on this matter of representations made by the Solicitor General, in the *Amicus Curiae* Brief of the United States submitted to the United States Supreme Court, about proceedings before the United States Federal Highway Administration involving defendants State of Michigan and Michigan Public Service Commission and about the informality of Michigan reciprocity policies. The plaintiff's motion to vacate this Court's opinion and to affirm the Court of Appeals decision is also considered, and it is DENIED as moot in light of this order. [*Yellow Freight, Inc v State of Michigan*, 468 Mich 862; 659 NW2d 229 (2003).] [Pet. App. 22a-23a.]

The Michigan Court of Appeals on remand simply reaffirmed that court's earlier decision in *Yellow Freight, supra,* 231 Mich App at 199-201. (Pet. App. 3a-21a.) The Michigan Court of Appeals' analysis is erroneous for the reasons fully discussed in Arguments B-D, *infra.*

B. The plain and unambiguous language of 49 USC 14504(c)(2)(B)(iv)(III) provides that a State may continue to charge a registration fee that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991.

On December 18, 1991, the federal Single State Registration System was signed into law. The SSRS provides in relevant part as follows:

> (c) Single State registration system.

(1) In general. Not later than 18 months after the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991 [enacted Dec. 18, 1991], the Commission shall prescribe amendments to the standards existing as of such date of enactment. Such amendments shall implement a system under which –

(A) a motor carrier is required to register annually with only one State;

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) Specific requirements.

(A) Evidence of certificate; proof of insurance; payment of fees. Under the amended standards, implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier holding a certificate or permit issued under this subtitle [49 USC §§ 10101 *et seq.*]—

(i) to file and maintain evidence of such certificate or permit;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

> (iv) to file the name of a local agent for service of process.
>
> (B) Receipts; fee system. Such amended standards--
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> * * *
>
> (iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) **will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991**. [49 USC 14504(c). (Emphasis added.)]

The critical language is contained in 49 USC 14504(c)(2)(B)(iv)(III) of the SSRS that establishes a fee system that "will result in a fee for each participating state that is equal to the fee, not to exceed $10.00 per vehicle, that such state collected or charged as of November 15, 1991." Thus, if a state either charged *or* collected a fee as of November 15, 1991, it could continue to do so under the SSRS which took effect in 1994.

C. In accordance with Michigan Compiled Law 478.7(4) the Petitioners charged and collected a $10 per vehicle fee from Respondent prior to the federally mandated deadline of November 15, 1991.

Michigan collects annual registration fees for motor carriers engaged in interstate transportation pursuant to MCL 478.7(4) that provides:

> The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The

> [Michigan Public Service] commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

Up until 1991, the MPSC waived the $10.00 registration fee of vehicles base-plated in other states that waived the fee for vehicles base-plated in Michigan. Early in 1991, however, the MPSC's methodology for determining waiver was changed to be consistent with the other states, i.e. reciprocity was to be based on the principal place of business of a carrier. Renewal applications reflecting the principal place of business reciprocity methodology were mailed to all interstate motor carriers in September 1991. Among the motor carriers receiving renewal applications was Yellow Freight. In October 1991 the Petitioners collected the $10 per vehicle fee that Respondent has challenged.

D. The Michigan Court of Appeals erred when it held that the Petitioners had unlawfully charged the Respondent a $10 per vehicle fee under 49 USC 14504(c)(2)(B)(iv)(III) even though the Petitioners had complied with the plain and unambiguous language of that statute when they charged and collected such a fee prior to the federally mandated deadline of November 15, 1991.

The question in this case, not previously addressed by this Court, is whether the State collected *or* charged the $10.00 fee, authorized by MCL 478.7(4), as of November 15, 1991. If the State either charged or collected the $10.00 fee as of November 15, 1991, then 49 USC 14504(c)(2)(B)(iv)(III) authorizes it to continue to charge and collect that fee under the SSRS. The State had been collecting and charging a $10 fee as provided for by MCL 478.7(4) since October 1, 1989. Moreover, the State actually charged and collected the $10 fee from Yellow Freight prior to the November 15, 1991 deadline.

The primary purpose of statutory interpretation is to ascertain and effectuate legislative intent. *Chevron U. S. A. Inc v Natural*

Resources Defense Council, Inc, et al, 467 US 837 (1984). In *Timex V.I., Inc v United States, et al,* 157 F3d 879, 881-882 (CA Fed Cir, 1998), the Court observed:

> We do not fulfill our duty to say what the law is, see *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803), by merely agreeing to Commerce's interpretation of the statutory provision at issue if it is "reasonable," regardless of whether we think it correct. Rather, before granting an agency's statutory interpretation such great deference (commonly referred to as "Chevron" deference), we must first carefully investigate the matter to determine whether Congress's purpose and intent on the question at issue is judicially ascertainable. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 & n.9, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984). Only if, after this investigation, we conclude that Congress either had no intent on the matter, or that Congress's purpose and intent regarding the matter is ultimately unclear, do we reach the issue of Chevron deference. See id.; cf. *Muwwakkil v. Office of Personnel Management*, 18 F.3d 921, 925 (Fed. Cir. 1994) ("When an agency's interpretation of a statute . . . is contrary to the intent of Congress, as divined from the statute and its legislative history, we owe it no deference."). Indeed, if we hastily "throw up our hands" and declare that Congress's intent is unclear, we abdicate our duty; in essence, we leave statutory construction to an Article II agency, rather than accept the responsibility the Constitution imposes on Article III courts. See *Marbury*, 5 U.S. (1 Cranch) 137 at 177, 2 L. Ed. 60.
>
> To ascertain whether Congress had an intention on the precise question at issue, we employ the "traditional tools of statutory construction." *Chevron*, 467 U.S. at 843 n.9. The first and foremost "tool" to be used is the statute's text, giving it its plain meaning. See *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1579 (Fed.

Cir. 1990). Because a statute's text is Congress's final expression of its intent, if the text answers the question, that is the end of the matter.

The controlling words of 49 USC 14504(c)(2)(B)(iv)(III) are plain and unambiguous and require no judicial construction. The plain meaning of 49 USC 14504(c)(2)(B)(iv)(III) is that it establishes a fee system that will "result in a fee for each participating state that is equal to the fee, not to exceed $10.00 per vehicle that such state collected or charged as of November 15, 1991." In this particular case, the fees had been both charged to and collected from Yellow Freight as of November 15, 1991.

The Congressional language in the SSRS establishing and freezing the permitted fee that was "charged or collected as of November 15, 1991" is not ambiguous. It needs no interpretation or embellishment. Congress did not provide that fees collected or charged for the "1991 calendar year" established the cut-off date. Instead, in 49 USC 14504(c)(2)(B)(iv)(III), Congress chose a precise cut-off date, specifying the exact day, month, and year, i.e., November 15, 1991. If Congress had intended that the cut-off period be synonymous with a calendar year, it would have said so. It did not.

The Michigan Court of Appeals on remand erred when it imputed the ambiguity this Court found in ISTEA with respect to reciprocity agreements to the otherwise express and unambiguous requirements of 49 USC 14504(c)(2)(B)(iv)(III) as they pertain to the charging and collecting of fees.. ISTEA was found to be ambiguous with respect to reciprocity agreements only, and that finding of ambiguity in that limited regard permitted the ICC to engage in a reasonable interpretation of the statute that was afforded deference by this Court under *Chevron*, 467 US at 843. Indeed the Court specifically limited its decision to that issue and expressly noted that it was not deciding the issue pertaining to the charging and collecting of fees. There is no similar ambiguity with regard to the specific requirements of 49 USC 14504(c)(2)(B)(iv)(III), and the Court of Appeals erred in seizing upon this Court's rationale in resolving the reciprocity issue to

justify a disregard for the clear and unambiguous requirements of the statute that directed the ICC to:

> "[E]stablish a fee system ... that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." §14504(c)(2)(B)(iv).

Yellow Transportation was charged by Michigan, and Michigan collected from Yellow Transportation, a ten-dollar fee as of November 15, 1991. There is no ambiguity reflected in this statutory requirement, and this Court should "give effect to the unambiguously expressed intent of Congress" *Chevron, supra*, at 842-843.

The dissenting opinion in the Michigan Court of Appeals, saw no ambiguity in 49 USC 14504(c)(2)(B)(iv)(III), finding that the plain language of the statute was controlling, noting that there was nothing in the Michigan Supreme Court's opinion or this Court's opinion that changes that result. 257 Mich App 618. (Pet. App. 16a-21a.) The dissent reasoned that, "if the ICC interpretation of ISTEA is contrary to the plain language of the statute and unworthy of deference, then the majority's affirmance of the ICC's interpretation of the unambiguous ISTEA is erroneous." *Id.* Because the phrase "collected or charged as of November 15, 1991" is "obviously clear on its face" the dissent then, 257 Mich App 618-620 (Pet. App. 18a-21a) reaffirmed and republished its earlier dissent, which stated, in pertinent part:

> I respectfully dissent from part II of the majority opinion. I find no ambiguity in the statutory provision in dispute, and accordingly would instruct the Court of Claims to apply the statutory language according to its

plain meaning and not according to the ICC's strained construction.

The primary goal of statutory interpretation is to ascertain and give effect to its legislative purpose. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995). The language of the statute itself is the primary indicator of legislative intent. *Folands Jewelry Brokers, Inc v City of Warren*, 210 Mich App 304, 307; 532 NW2d 920 (1995). "If the plain and ordinary meaning of the statute is clear, judicial construction is normally neither necessary nor permitted." *Dep't of Transportation v Thrasher*, 196 Mich App 320, 323; 493 NW2d 457 (1992), aff'd 446 Mich 61; 521 NW2d 214 (1994).

The pertinent language in 49 USC 11506(c)(2)(B)(iv)(III) [49 USC 11504(c)(2)(B)(iv)(III)] provides for establishment of a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The majority reasons that this language calls for identifying a "pertinent period" ending November 15, 1991, but that it reveals no congressional intent concerning when this period begins. The majority then resolves this supposed ambiguity by concluding that the provision refers to fees charged for the registration year that includes November 15, 1991. However, this construction disregards the word "collected," and broadens the specific reference, "as of November 15, 1991," to indicate the whole registration year that happens to include November 15, 1991. This distortion of the plain wording of the statute is unnecessary and inappropriate. Legislative intent "is to be found in the terms and arrangement of the statute without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense." *Gross v General Motors Corp*, 448 Mich 147, 160; 528 NW2d 707 (1995). The ambiguity that the majority finds is the result of the majority's failure to accept the statutory

wording at face value. When a statute is clear on its face, judicial construction is unnecessary and inappropriate. *Thrasher, supra.*

As the majority states, it was the intent of Congress to "freeze fees at the level as of November 15, 1991." To determine the particulars of that intent, I would restore "collected" as the companion of "charged," and respect the specificity of "November 15, 1991." A court should presume that every word has some meaning, and avoid rendering any word nugatory. *Tiger Stadium Fan Club, Inc v Governor*, 217 Mich App 439, 457; 553 NW2d 7 (1996). Accordingly, I would read "fee . . . that such State collected or charged as of November 15, 1991" as fixing fee levels by reference to what the state charged on, or had actually collected by, November 15, 1991.

The statute does not refer to a "period" ending on November 15, but simply to that specific date. It does not refer only to the fee structure in place at the specified time, but to fees "collected or charged" at that time, identifying fees payable to the state, or already paid to the state(for whatever the reason), as establishing the level at which the fees are to be frozen. The words "as of" in reference to a specific date clearly refer to the status quo in place on that date. Thus, the congressional intent to freeze fees at the rates "collected or charged as of November 15, 1991" plainly recognizes for this purpose both the rates actually charged and those according to which fees were actually collected on that date.

Accordingly, because the state had collected plaintiff's fees as envisioned for the 1992 registration year "as of November 15, 1991," 49 USC 11506(c)(2)(B)(iv)(III), by its plain terms, allows the state to continue to assess plaintiff's fees according to the new scheme under which plaintiff had tendered payment by November 15, 1991.

As correctly noted by the dissent, there is no ambiguity in the federal statute. Applying the plain and ordinary meaning of the statute means that Michigan's fees can be set aside only if they were not "charged or collected as of November 15, 1991." The majority opinion issued by the Court of Appeals acknowledges both that the fees were charged to Yellow Freight and were collected from Yellow Freight prior to November 15, 1991. 257 Mich App at 606 ("Yellow Freight sent, and the State received the fees for 1992 before November 15, 1991"). This acknowledgment was re-affirmed by the Court of Appeals on remand, 257 Mich App at 606. Despite the acknowledgement of these two controlling facts, either one of which is sufficient to satisfy the criteria set forth in 49 USC 14504(c)(2)(B)(iv)(III), the majority opinion concluded the phrase "charged or collected as of November 15, 1991" is not clear. 231 Mich App at 201, and July 22, 2003 Opinion on remand, 257 Mich App at 613. (Pet. App. 3a-15a.) As noted by the dissent, "The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value." 231 Mich App at 210; 257 Mich App at 619. (Pet. App. 19a.) Indeed, by failing to adhere to the clear and unambiguous language of the statute, the Michigan Court of Appeals had violated a cardinal rule of statutory construction that counsels judicial construction is not permitted where the language of the statute is clear and unambiguous. *Chevron U. S. A., supra.* Aids to interpretation should be used only to resolve ambiguity and not to create it.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted

Michael A. Cox
Attorney General

Thomas L. Casey
Solicitor General
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
Telephone: (517) 373-1124

David A. Voges
Michael A. Nickerson
Assistant Attorneys General
Attorneys for Petitioners

Dated: July, 2004

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Order
Entered: April 9, 2004

Michigan Supreme Court
Lansing, Michigan

124430

Maura D. Corrigan,
Chief Justice

YELLOW TRANSPORTATION INC.,
Plaintiff-Appellee,

v

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 124430
COA: 194703
Ct of Claims: 95-015706-CM

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE TREASURER, DEPARTMENT OF COMMERCE, DIRECTOR OF DEPARTMENT OF COMMERCE, MICHIGAN PUBLIC SERVICE COMMISSION, and MICHIGAN PUBLIC SERVICE COMMISSIONERS,
Defendants-Appellants.
_____/

On order of the Court, the application for leave to appeal the July 22, 2003 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

Markman, J., dissents and states as follows:

I would grant leave to appeal to consider whether the fees plaintiff sent, and the state received, before November 15, 1991, were "collected or charged as of November 15, 1991."

49 USC 11506(c)(2)(B)(iv)(III) (1994), recodified at 49 USC 14504(c)(2)(B)(iv)(III) (Supp. V 1999).

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 9, 2004

/s/
Deputy Clerk

STATE OF MICHIGAN

COURT OF APPEALS

YELLOW TRANSPORTATION, INC.,

Plaintiff-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, DEPARTMENT OF COMMERCE, and MICHIGAN PUBLIC SERVICE COMMISSION,

Defendants-Appellants.

FOR PUBLICATION
July 22, 2003
9:05 a.m.

No. 194703
Court of Claims
LC No. 95-015706-CM

ON REMAND
Updated Copy
September 12, 2003

Before: Griffin, P.J., and Jansen and O'Connell, JJ.

GRIFFIN, P.J.

This case is before us for the second time. On remand, the Michigan Supreme Court has directed us to reconsider this matter in light of the United States Supreme Court decision in *Yellow Transportation, Inc v Michigan*, 537 US 36; 123 S Ct 371; 154 L Ed 2d 377 (2002) (*Yellow Transportation IV*), and to address certain other issues. 468 Mich 862 (2003). After doing so, we again affirm the judgment of the Court of Claims and remand for further proceedings consistent with this opinion.

I

The factual background of this case was summarized as follows by Judge McDonald writing for this Court on the initial

appeal, *Yellow Freight Sys, Inc v Michigan*, 231 Mich App 194, 196-199; 585 NW2d 762 (1998) (*Yellow Freight II*):[1]

> Plaintiff, an interstate commercial carrier, brought this action asserting that defendants (the state) had collected registration fees pursuant to MCL 478.7(4); MSA 22.565(1)(4) in excess of the amount allowed by federal law, specifically the single-state registration system (SSRS). . . .
>
> In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (ISTEA), PL 102-240, which substantially amended 49 USC 11506[2] and directed the Interstate Commerce Commission (ICC) to reform the licensing and registration system existing in the states. The statute mandated the creation of a new system, the SSRS. The statute required the ICC to prescribe amendments of the previously existing standards and set forth certain requirements for the new standards.
>
> The provision at issue, 49 USC 11506(c)(2)(B)(iv)(III), stated that the amended standards shall establish a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The regulations promulgated by the ICC repeated the phrase "collected or charged as of November 15, 1991" without further explanation. See 49 CFR 1023.4(c)(4)(ii) (1995), later redesignated as 49 CFR 367.4(c)(4)(ii) (1996).
>
> Because the statute essentially froze the fees a state could collect at the level existing as of November 15,

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[1] On remand, Judge Jansen has been substituted for Judge McDonald, who sat on the original panel and has since retired.

[2] 49 USC 11506 was amended and recodified, and now appears at 49 USC 14504. Consistent with our prior opinion in *Yellow Freight II*, we will refer to the statute as 49 USC 11506.

1991, the fee system in effect in this state at that time is pertinent to understanding the issues raised in this case. For the 1991 and 1992 registration years, the state collected fees by requiring interstate carriers to buy cab card stamps, also known as "bingo stamps," for each of the carrier's vehicles operating within the state. Each stamp cost $10. Pursuant to MCL 478.7(4); MSA 22.565(1)(4), the state had reciprocity agreements with certain other states so that each would waive the fees for vehicles from the other. The dispute arises in part because the state changed the method it used for determining reciprocity. For 1991, the state used the "base-plating system," which means that reciprocity was determined by the state of the vehicle's registration. In early 1991, the Public Service Commission (PSC) decided that it would quit using the base-plating system. Instead, for the 1992 registration year, fees and reciprocity were determined by the carrier's principal place of business. The revised renewal applications were mailed to all interstate motor carriers in September 1991. Importantly, the 1992 fees to be "collected or charged" by the state were based on a calendar year and therefore were not due and owing until January 1, 1992.

The change in the method of determining reciprocity resulted in a substantial increase in the fees plaintiff owed the state for the 1992 registration year. Under the base-plating system used for 1991, plaintiff paid the state $50 for five vehicles that were "base-plated" in Oklahoma, but paid nothing for 3,730 vehicles "base-plated" in Illinois and Indiana, because those states did not charge fees for vehicles based in Michigan. However, plaintiff 's principal place of business is Kansas, which had no fee waiver agreement with Michigan. Therefore, for 1992, plaintiff paid $10 a vehicle, a total of $ 37,850 under the new system. Plaintiff sent, and the state received, the fees for 1992 before November 15, 1991. Plaintiff voluntarily paid

its 1992 fees early in order to prevent any disruption of its trucking activities at the commencement of the 1992 calendar year.

Plaintiff filed this action in 1995 in the Court of Claims seeking a refund of registration fees it had paid to the state pursuant to MCL 478.7(4).[3] Plaintiff alleged that, because the ISTEA froze fees at the level "collected or charged as of November 15, 1991," subsection 11506(c)(2)(B)(iv)(III), defendants could not levy a fee for registration year 1994[4] and beyond on plaintiff 's vehicles registered in states with which Michigan had entered into reciprocity agreements as of that date. On cross-motions for summary disposition, the Court of Claims entered judgment for plaintiff, relying on the ICC's declaratory order in *American Trucking Associations—Petition for Declaratory Order—Single State Insurance Registration,* 9 ICC2d 1184, 1192, 1195 (1993), in which the agency held that the ISTEA had capped fees at the level "collected or charged" for registration year 1991, not those fees levied in advance for registration year 1992. *Yellow Freight System, Inc v Michigan,* Court of Claims Docket No. 95-015706-CM, March 13, 1996 (*Yellow Freight I*).

In a two-to-one decision, this Court affirmed, ruling that the ICC's interpretation of the ambiguous ISTEA fee-cap provision was reasonable and entitled to deference. *Yellow Freight II, supra* at 199-203. Judge O'Connell dissented from that part of the majority opinion that found the statutory

---

[3] This subsection provides:

> The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The [public service] commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.

[4] Although the ISTEA was enacted in 1991, the SSRS did not become effective until January 1, 1994. See 49 USC 11506(c)(3).

provision to be ambiguous. *Id.* at 209-210 (O'Connell, J., concurring in part and dissenting in part). Judge O'Connell would have accorded no deference to "the ICC's strained construction" of 49 USC 11506(c)(2)(B)(iv)(III), and instead would have read the statute's plain language "as fixing fee levels by reference to what the state charged on, or had actually collected by, November 15, 1991." *Id.* at 209, 211.

The Michigan Supreme Court reversed and remanded to this Court, holding that "Michigan's reciprocity agreements are not relevant in determining what fee was 'charged or collected' as of November 15, 1991." *Yellow Freight Sys Inc v Michigan*, 464 Mich 21, 33; 627 NW2d 236 (2001) (*Yellow Freight III*). The Court expressly rejected the ICC's interpretation of the ISTEA, finding it to be contrary to the plain language of the statute, and, consequently, unworthy of deference. *Id.* at 29-31. The Court reasoned that Michigan's new fee system was based not on the fees collected from one individual company, such as Yellow Freight, in any given year, but on the generic fee system that the state had in place on November 15, 1991. *Id.* at 31.

The United States Supreme Court granted certiorari to determine whether the Michigan Supreme Court erred in holding that, for purposes of determining the fee that was "collected or charged as of November 15, 1991," only a state's generic fee is relevant. 534 US 1112; 122 S Ct 918; 151 L Ed 2d 883 (2002). In a decision delivered by Justice O'Connor, the United States Supreme Court held that the Michigan Supreme Court had erred in so holding because states may not renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of that date. *Yellow Transportation IV, supra*.[5] The Court further held that the ICC's interpretation of the ISTEA fee-cap provision reasonably resolved any ambiguity in the statute and the interpretation therefore was entitled to deference under *Chevron USA Inc v Natural*

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[5] Yellow Freight System, Inc., became Yellow Transportation, Inc., in January 2002.

Resources Defense Council, Inc, 467 US 837; 104 S Ct 2778; 81 L Ed 2d 694 (1984). *Yellow Transportation IV, supra* at 44-48. The Court reversed the decision of the Michigan Supreme Court in *Yellow Freight III* and remanded to the Michigan Supreme Court for "further proceedings not inconsistent with this opinion." *Id.* at 48.

On remand from the United States Supreme Court, the Michigan Supreme Court vacated its *Yellow Freight III* opinion and remanded to this Court for reconsideration in light of *Yellow Transportation IV*, and to reconsider other preserved arguments of the parties not directly addressed by the Michigan Supreme Court or the United States Supreme Court. 468 Mich 862 (2003). We were further directed to address the effect, if any, on this matter of certain representations made by the Solicitor General in the amicus curiae brief of the United States submitted to the United States Supreme Court in *Yellow Transportation IV*. *Id.*

II

In *Yellow Transportation IV, supra* at 44, the United States Supreme Court acknowledged the limited issue before the Court:

> The Michigan Supreme Court did not consider respondents' argument that the fees petitioner paid Michigan for the 1992 registration year were "collected or charged as of November 15, 1991." 49 USC § 14504(c)(2)(B)(iv)(III). Nor did that court reach the question whether Michigan had "canceled its reciprocity agreements with other States in 1989." Brief for the United States as *Amicus Curiae* 23. The only issue before this Court, therefore, is whether States may charge motor carrier registration fees in excess of those charged or collected under reciprocity agreements as of November 15, 1991.

Notwithstanding the limited nature of the Court's ruling, its reasoning and analysis in reaching its conclusion provide a solid foundation on which to analyze the penultimate issue now before us, i.e., whether the fees plaintiff paid to the state in advance for the 1992 registration year were "collected or charged as of November 15, 1991." 49 USC 11506(c)(2)(B)(iv)(III).

On remand from the Michigan Supreme Court, defendants essentially adopt Judge O'Connell's dissent in *Yellow Freight II* by arguing that the ISTEA fee-cap provision is unambiguous inasmuch as the $10 registration fee authorized by MCL 478.7(4) was both *charged* and *collected* as of November 15, 1991. Defendants contend that, consistent with Congress's intent, Michigan did not charge a greater fee after enactment of the SSRS, but, rather, continued to charge a $10 fee for each vehicle. Defendants further contend that, because 49 USC 11506(c)(2)(B)(iv)(III) is plain and unambiguous, the ICC's interpretation is unreasonable and not entitled to deference because it engrafted onto the statute an additional qualification that "not only must the fees be collected and charged as of November 15, 1991, but they must also be for fees for the 1991 registration year." Lastly, defendants contend that the ICC's interpretation in *American Trucking Associations, supra,* is dicta because it was not essential to the resolution of the matter noticed for comment.

Plaintiff responds by arguing that our rationale in *Yellow Freight II* remains unimpaired in light of *Yellow Transportation IV* and the longstanding principles of agency deference under *Chevron, supra.*

We agree with plaintiff that our decision in *Yellow Freight II* stands on substantially stronger ground as a result of the United States Supreme Court's decision in *Yellow Transportation IV.* The crux of Justice O'Connor's opinion was to rule that the ISTEA's fee-cap provision was ambiguous, that the ICC had been delegated express authority by Congress "to resolve any ambiguities and fill in any holes in the statutory

scheme," that the ICC's interpretation was a reasonable one, and, as such, "the Michigan Supreme Court erred in declining to enforce it." *Yellow Transportation IV, supra* at 47-48. We find this analysis to apply with equal force to the determination of Congress's intent in choosing the November 15, 1991, date to freeze fees. Defendants' arguments on remand merely rehash arguments that were made on initial appeal—arguments that were soundly rejected by a majority of this panel in *Yellow Freight II*.

Accordingly, in light of Justice O'Connor's opinion in *Yellow Transportation IV*, our analysis of the present issue on initial appeal was entirely correct and we restate and reaffirm it today, *Yellow Freight II, supra* at 199-201:

> The state argues the Court of Claims erred in determining that the state could not charge plaintiff $10 a vehicle. According to the state, it had "charged or collected" $10 a vehicle as of November 15, 1991. Plaintiff argued, and the Court of Claims agreed, the statute was properly interpreted to refer to the fees charged or collected for the 1991 registration year. We affirm the Court of Claims' decision with regard to this issue.
>
> The Court of Claims' opinion indicates its decision was based on the ICC's decision in *American Trucking [Associations]—Petition for Declaratory Order—Single State Ins Registration*, 9 ICC2d 1184 (1993). In *American Trucking*, the ICC discussed various issues that had arisen under the SSRS. The plaintiff sought clarification from the ICC concerning the statutory language. The ICC summarized the issue raised by the plaintiff in the following way:
>
> "Yellow [Freight] raises the issue of whether the statutory language concerning the fee charged on November 15, 1991, relates to fees charged for the 1991 registration year or the 1992 registration year. (Under the 'bingo' regulations, carriers filed

applications between October 1 and December 31 for stamps or identification numbers for the ensuing year.) Yellow points out that it paid a State zero fees covering 1991 operations and $10 per vehicle fees covering 1992 operations. However, Yellow paid the 1992 fees prior to November 15, 1991. It would have the Commission conclude that the focus of the statute is on the 1991 registration year and that the fee for 1992 is not germane."

The ICC resolved the matter as follows:

"Yellow has raised the issue of whether the statutory language concerning the 'fee charged or collected as of November 15, 1991[,]' relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find."

The state argues the court should not have followed *American Trucking* because it does not comport with the unambiguous language of the statute and renders the November 15, 1991, deadline a "nullity." Therefore, the state argues the decision was not entitled to the deference usually afforded an agency's interpretation of a statute that the agency is charged with enforcing.

This Court has recognized that deference should be given to the interpretation of a federal statute by the agency administering it and that following an agency's interpretation promotes uniformity in application by the states. *Gibbs v General Motors Corp,* 134 Mich App 429, 432; 351 NW2d 315 (1984). Where a statute is silent or ambiguous regarding congressional intent, a reviewing court "should defer to a federal agency's construction of the statute unless the agency's interpretation is unreasonable." *Walker v Johnson & Johnson Vision Products, Inc,* 217 Mich App 705, 713; 552 NW2d 679 (1996), citing *Chevron USA, Inc v*

Natural Resources Defense Council, Inc, 467 US 837, 844; 104 S Ct 2778; 81 L Ed 2d 694 (1984).

Congress' intent concerning the allowable fee levels is not clear with respect to the pertinent period for fixing the fee levels. The phrase "as of November 15, 1991" denotes a period that ends on the specified date. However, the statute is silent regarding when the period begins. One could argue a state that had charged or collected fees from a carrier in *any* year before 1991 was entitled to continue to collect the fees under the SSRS. On the other hand, one could conclude, as the ICC did, that the relevant period was the registration year that included November 15, 1991. We do not believe Congress "had an intention on the precise question at issue . . . ." *Id.* at 843, n 9. Because the statute does not reveal congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. *Walker, supra.*

We conclude that the agency's interpretation of the statute was reasonable. In our opinion, the agency acted reasonably in determining the fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991. Plaintiff 's voluntary payment of fees not due and owing does not affect our analysis. [Emphasis in original.]

III

In his amicus curiae brief before the United States Supreme Court in *Yellow Transportation IV*, the Solicitor General noted that, in October 1998, following issuance of our decision in *Yellow Freight II*, which was adverse to the state's position, Michigan filed with the United States Federal Highway Administration a "Petition to Reconsider Final Administrative Decision in *American Trucking Associations—Petition for*

Declaratory Order—Single State Insurance Registration, ICC 41086, issued on November 18, 1993, or in the Alternative a Request that a Rulemaking Proceeding be Instituted." See April 5, 2002, Amicus Curiae Brief of the United States, pp 23-24 (available in Lexis, 2001 US Briefs 270). The petition sought to revisit the ICC's holding in *American Trucking Associations, supra* at 1192, 1195, that the fee cap in § 11506 prohibited consideration of fees levied in advance for calendar year 1992. Yellow Freight filed a response opposing the petition. In 2000, motor-carrier safety matters, including the state's petition, were transferred from the Federal Highway Administration to the Federal Motor Carrier Safety Administration (FMCSA). See 49 USC 113(f)(1). The Solicitor General noted that, while the Michigan Supreme Court's holding in *Yellow Freight III* in 2001 had rendered moot the relief sought by the state in its petition, the United States Supreme Court's reversal of that decision "would provide the agency an opportunity to address Michigan's petition." Briefs, *supra* at 23. On remand, the Michigan Supreme Court has directed us to address the effect, if any, of the state's pending petition.

Plaintiff asserts that the FMCSA has shown no intention to act on the petition and that, in any event, the petition has no significance to these proceedings. Plaintiff notes that *American Trucking Associations* remains as the final and binding statement of the ICC and its successor agencies on the issues in the case and its holding was repeatedly cited by the United States Supreme Court in *Yellow Transportation IV, supra* at 40-44, 46-48. Moreover, plaintiff asserts that the state has never taken the position that its petition provides a basis to stay or otherwise delay appellate review of this matter. Defendants concede that the federal agency has taken no action on the petition in the 4-1/2 years since it was filed.

Given these circumstances, we conclude that the state's pending petition should neither delay nor affect our review.

The Solicitor General, in his *Yellow Transportation IV* amicus curiae brief further suggested that the case "may be complicated by the informality of Michigan's reciprocity policies." Briefs, *supra* at 23. Indeed, in his affidavit in support of defendants' motion for summary disposition in the Court of Claims, Thomas Lonergan, Director of the PSC's Motor Carrier Regulation Division, averred: "On August 2, 1989 Chairman William Long sent a letter to all states and provinces canceling any previous reciprocity agreements." Thereafter, however, according to Lonergan, "[t]he Public Service Commission made a policy decision not to charge a fee to carriers with vehicles registered in states or provinces which did not charge Michigan-based carriers a fee." The Solicitor General noted that the legal significance, if any, of these facts had not been considered by the Michigan courts. In its remand order, the Michigan Supreme Court has directed us to address the issue.

Plaintiff contends that the reason this issue has not been considered is that defendants have never raised it as a defense to plaintiff 's claim for relief, and, as such, the issue is unpreserved for appellate review. In any event, plaintiff contends that the state's actions comported with Michigan law and that there is no factual support for the Solicitor General's suggestion that the PSC's fee waivers were not based on reciprocal waivers by other states in all instances. Defendants agree that Michigan's reciprocity policy after 1989, albeit unwritten and informal, comported with Michigan law inasmuch as there was no statutory requirement that such policies be in writing. See MCL 478.7(4).

Under the circumstances, where Michigan law does not mandate that the PSC's reciprocity policies be in writing, and where neither party disputes the effect of such informal policies, we conclude that the issue is without effect on our primary holding regarding permissible fees under the ISTEA.

Other than calculation of refunds due plaintiff, neither party has identified any remaining issues to be resolved on remand.

IV

The judgment of the Court of Claims that awarded plaintiff a refund of fees for 1994, 1995, and 1996 in the amount of $99,580, plus interest, is affirmed. We further remand this matter to the Court of Claims for calculation of any refunds due for years 1997 and beyond in accordance with the court-approved stipulation and order dated April 17, 1996.

Affirmed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

Jansen, J., concurred.

/s/ Richard Allen Griffin
/s/ Kathleen Jansen

STATE OF MICHIGAN

COURT OF APPEALS

YELLOW TRANSPORTATION INC.,

Plaintiff-Appellee,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, DEPARTMENT OF COMMERCE, and MICHIGAN PUBLIC SERVICE COMMISSION,

Defendants-Appellants.

FOR PUBLICATION
July 22, 2003
9:05 a.m.

No. 194703
Court of Claims
LC No. 95-015706 CM

ON REMAND

Updated Copy
September 12, 2003

Before: Griffin, P.J., and Jansen and O'Connell, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. On remand, the primary issue in the present case is to determine if the statutory phrase, "collected or charged as of November 15, 1991," is ambiguous. As I stated in my dissent in the previous appeal of this case, I would hold that the phrase is unambiguous. See *Yellow Freight Sys, Inc v Michigan*, 231 Mich App 194, 209-212; 585 NW2d 762 (1998) (O'Connell, J., concurring in part and dissenting in part) (*Yellow Freight II*). On remand, I continue to be of the opinion that the phrase is unambiguous. See *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001) ("If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written.").

Nothing in the Michigan Supreme Court's opinion, 468 Mich 862 (2003) (*Yellow Freight III*), or the United States Supreme Court's opinion in this matter, *Yellow Transportation, Inc v Michigan*, 537 US 36; 123 S Ct 371; 154 L Ed 2d 377 (2002) (*Yellow Transportation IV*), persuades me that my original position was incorrect. I note that Justice O'Connor specifically stated in *Yellow Transportation IV*, *supra* at 44, that neither the Michigan Supreme Court nor the United States Supreme Court addressed the issue raised by my previous dissent. Justice O'Connor stated:

> The Michigan Supreme Court did not consider respondents' argument that the fees petitioner paid Michigan for the 1992 registration year were "collected or charged as of November 15, 1991." 49 USC § 14504(c)(2)(B)(iv)(III). . . . The only issue before this Court, therefore, is whether States may charge motor carrier registration fees in excess of those charged or collected under reciprocity agreements as of November 15, 1991.

Because neither the United States Supreme Court opinion nor the Michigan Supreme Court opinion addressed the issue raised by my previous dissent, my previous dissent remains unaffected by these subsequent decisions. In fact, I am slightly encouraged by the Michigan Supreme Court's statement in *Yellow Freight III* that the Interstate Commerce Commission's (ICC) interpretation of the Intermodal Surface Transportation Efficiency Act (ISTEA), PL 102-204, was contrary to the plain language of the statute, and, consequently, unworthy of deference. *Yellow Freight III*, *supra* at 29-31. Indeed, if the ICC interpretation of the ISTEA is contrary to the plain language of the statute and if it is unworthy of deference, then the majority's affirmance of the ICC's interpretation of the unambiguous ISTEA is erroneous. See *Wickens*, *supra*.

In my previous dissent, I determined that the phrase "collected or charged as of November 15, 1991" is

unambiguous. If I could conclude that this phrase is ambiguous, and if I was not cognizant of the Michigan Supreme Court's edict in *Yellow Freight III* cited above, I might consider approving the majority opinion. However, because the phrase is obviously clear on its face, I reaffirm and republish my previous dissent:

> I respectfully dissent from part II of the majority opinion. I find no ambiguity in the statutory provision in dispute and accordingly would instruct the Court of Claims to apply the statutory language according to its plain meaning and not according to the ICC's strained construction.
>
> The primary goal of statutory interpretation is to ascertain and give effect to legislative purpose. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995). The language of the statute itself is the primary indicator of legislative intent. *Folands Jewelry Brokers, Inc v City of Warren*, 210 Mich App 304, 307; 532 NW2d 920 (1995). "If the plain and ordinary meaning of the statute is clear, judicial construction is normally neither necessary nor permitted." *Dep't of Transportation v Thrasher*, 196 Mich App 320, 323; 493 NW2d 457 (1992), aff'd 446 Mich 61; 521 NW2d 214 (1994).
>
> The pertinent language in [former] 49 USC 11506(c)(2)(B)(iv)(III) provides for establishment of a fee system that "will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." The majority reasons that this language calls for identifying a "pertinent period" ending November 15, 1991, but that it reveals no congressional intent concerning when this period begins. The majority then resolves this supposed ambiguity by concluding that the provision refers to fees charged for the registration year that includes November 15, 1991. However, this construction

disregards the word "collected," and broadens the specific reference, "as of November 15, 1991," to indicate the whole registration year that happens to include November 15, 1991. This distortion of the plain wording of the statute is unnecessary and inappropriate. Legislative intent "is to be found in the terms and arrangement of the statute without straining or refinement, and the expressions used are to be taken in their natural and ordinary sense." *Gross v General Motors Corp*, 448 Mich 147, 160; 528 NW2d 707 (1995). The ambiguity that the majority finds is the result of the majority's failure to accept the statutory wording at face value. When a statute is clear on its face, judicial construction is unnecessary and inappropriate. *Thrasher*, *supra*.

As the majority states, it was the intent of Congress to "freeze fees at the level as of November 15, 1991." To determine the particulars of that intent, I would restore "collected" as the companion of "charged," and respect the specificity of "November 15, 1991." A court should presume that every word has some meaning and avoid rendering any word nugatory. *Tiger Stadium Fan Club, Inc v Governor*, 217 Mich App 439, 457; 553 NW2d 7 (1996). Accordingly, I would read "fee . . . that such State collected or charged as of November 15, 1991" as fixing fee levels by reference to what the state charged on, or had actually collected by, November 15, 1991.

The statute does not refer to a "period" ending on November 15, but simply to that specific date. It does not refer only to the fee structure in place at the specified time, but to fees "collected or charged" at that time, identifying fees payable to the state, or already paid to the state (for whatever the reason), as establishing the level at which the fees are to be frozen. The words "as of" in reference to a specific date clearly refer to the status quo in place on that date. Thus, the congressional intent to freeze fees at the rates "collected

or charged as of November 15, 1991" plainly recognizes for this purpose both the rates actually charged and those according to which fees were actually collected on that date.

Accordingly, because the state had collected plaintiff's fees as envisioned for the 1992 registration year "as of November 15, 1991," 49 USC 11506(c)(2)(B)(iv)(III), by its plain terms, allows the state to continue to assess plaintiff's fees according to the new scheme under which plaintiff had tendered payment by November 15, 1991.

At stake here is the state's interest in collecting higher fees from plaintiff in accordance with recent changes in the state's regulatory scheme, and plaintiff's interest in avoiding those fee increases and continuing to operate under the old scheme. Each party argues that the other stands to receive a windfall if the other's interpretation of the statutory language at issue is adopted. That statutes have the effect, intentionally or not, of benefiting some and burdening others is not a matter of dispute, and the Intermodal Surface Transportation Efficiency Act is no exception. Under any interpretation of 49 USC 11506(c)(2)(B)(iv)(III), someone will win and someone will lose. Although the state's reading of the statute to cause plaintiff to have to continue to pay much higher fees simply because plaintiff chose to pay 1992 fees before November 15, 1991, may seem a harsh result, the result is equally harsh if the state is obliged to forgo receiving the higher revenues to which its own laws entitle it simply because the federal statute articulated a date of late 1991 instead of early 1992. For these reasons, I would avoid any concern for who benefits, or who gets burdened, from 49 USC 11506(c)(2)(B)(iv)(III) and simply give effect to its plain language.

Although I express no disagreement with the reasoning of part V of the majority opinion, I do not

join in that part because it concerns the relief to which plaintiff is entitled, where under my reading of the statute in question plaintiff is not entitled to any relief. I concur with parts III, IV, and VI. [*Yellow Freight II*, *supra* at 209-212.]

/s/ Peter D. O'Connell

Order
Entered: March 11, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

113656 & (58) (59)

YELLOW FREIGHT SYSTEM, INC.,
Plaintiff-Appellee,

v

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 113656
COA: 194703
Ct of Claims: 95-15706-CM

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, STATE TREASURER, DEPARTMENT OF COMMERCE, DIRECTOR OF DEPARTMENT OF COMMERCE, MICHIGAN PUBLIC SERVICE COMMISSION, and MICHIGAN PUBLIC SERVICE COMMISSIONERS,
Defendants-Appellants.

On order of the Court, the November 5, 2002 mandate of the United States Supreme Court having reversed the May 15, 2001 opinion and judgment of this Court appearing at 464 Mich 21; 627 NW 2d 236 (2001), and that Court having remanded this cause for further proceedings not inconsistent with its opinion appearing at 537 US ___; 123 S Ct 371; 154 L Ed 2d 377 (2002), this matter is again considered, and, pursuant to MCR 7.316(A)(7), we VACATE our May 15, 2001 opinion and judgment and REMAND this case to the Court of Appeals for reconsideration in light of the United States Supreme Court's decision. On remand the Court of Appeals is also DIRECTED to reconsider preserved arguments of the parties not directly addressed by this Court or the United States

Supreme Court, including whether § 4005 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), 49 USC 11506(c)(2)(B)(iv)(III) (1994) [recodified at 49 USC 14504(c)(2)(B)(iv)(III) (Supp. V 1999)] allows defendants to set the State's registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. The parties are further DIRECTED to address the impact, if any, on this matter or representations made by the Solicitor General, in the *Amicus Curiae* Brief of the United States submitted to the United States Supreme Court, about proceedings before the United States Federal Highway Administration involving defendants State of Michigan and Michigan Public Service Commission and about the informality of Michigan's reciprocity policies. See 2001 US Briefs (Lexis) 270 at pp. 23-4 (4/5/02 *Amicus Curiae* Brief of the United States). The plaintiff's motion to vacate this Court's opinion and to affirm the Court of Appeals decision is also considered, and it is DENIED as moot in light of this order.

We do not retain jurisdiction.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 11, 2003 /s/

Deputy Clerk

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

YELLOW FREIGHT SYSTEM, INC.

Plaintiff-Claimant,

v

Case No. 95-15706-CM
Hon. William E. Collette

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF COMMERCE AND ITS DIRECTOR AND MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, RONALD E. RUSSELL AND JOHN L. O'DONNELL,

Defendants-Respondents.

_____/

JUDGMENT

At a session of said Court, held in the Court of Claims, City of Lansing, State of Michigan, on April 17, 1996.

PRESENT: HON. WILLIAM E. COLLETTE
Court of Claims Judge

The parties having filed cross-motions for summary disposition before the Court, and the Court having heard arguments in support of said respective motions, and the Court having rendered its Opinion and Order and entered same on March 13, 1996 and Defendants having filed their Motion for Reconsideration, and the Court having denied same on March 28, 1996,

IT IS ORDERED AND ADJUDGED that judgment is hereby entered against Defendants State of Michigan, Michigan Department of Treasury, Michigan Department of Commerce, and Michigan Public Service Commission, jointly and severally, in the amount of $99,580.00, together with interest as provided by MCL 600.6455(2), said interest to be computed from the date of filing of complaint for fees paid for 1994 and 1995, and from January 10, 1996 for those fees paid for 1996.

IT IS FURTHER ORDERED that this judgment also shall have prospective effect and shall bar Defendants from further collection of vehicle registration fees from Plaintiff-Claimant under MCL 478.7 until such time as 49 USC §11506(c)(B)(iv) is rescinded.

IT IS FURTHER ORDERED that entry of this judgment shall be without prejudice to the parties' rights of appeal in this matter.

Date: _____

/s/
WILLIAM E. COLLETTE
Circuit Court Judge

Approved as to Form, only, and
not as to content:

/s/
Judith I. Blinn (P-26678)
Assistant Attorney General
6545 Mercantile Way
Suite 15
Lansing, MI 48911
(517) 334-7650
Attorney for Defendant

Dated: April 16, 1996

/s/
Ronald J. Mastej (P17195)
John W. Bryant (P11331)
EAMES WILCOX
1400 Buhl Building
Detroit, MI 48226-3602
(313) 963-3750
Attorneys for Plaintiff

Dated: April 12, 1996

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

YELLOW FREIGHT SYSTEM, INC.,

Plaintiff,

v

STATE OF MICHIGAN, et al.,

Defendants.

File No. 95-15706-CM

Hon. William E. Collette

OPINION AND ORDER

FACTS

Plaintiff is a commercial hauler operating in interstate commerce throughout the United States. The State of Michigan has assessed a ten dollar ($10) charge, per vehicle, registration fee to Yellow Freight pursuant to 49 USC §11506(c). Under this provision, states may assess the fee against interstate motor carriers only if such fee "is equal to the fee, not to exceed $10 per vehicle, that such state collected or charged as of November 15, 1991."

It is undisputed that, prior to the enactment of the above law, individual states were permitted to charge a fee to various carriers operating in interstate commerce. However, the state of Michigan had in place during calendar year 1991 a reciprocity agreement with various neighboring states, including Illinois, that waived imposition of the fee against motor carriers based in Michigan. It is undisputed that no registration fee was charged to Yellow Freight for calendar years 1990 and 1991 because Illinois had agreed to waive the fee for Michigan motor carriers.

In December, 1991, the Intermodal Surface Transportation Efficiency Act went into effect after being signed by the President. Under this new law, each motor carrier would pay all assessed fees through its home state. Each home state was required to assess and collect fees charged by other states on their behalf.

Pursuant to the above, Yellow Freight dutifully paid its registration fees to the State of Kansas, its home state. In addition, it paid a ten dollar ($10) per vehicle fee to the State of Michigan under protest for calendar year 1994. Likewise, fees were paid under protest for 1995 and 1996.

Prior to the end of 1991, Michigan changed the basis for determining reciprocity. Formerly, the state of licensure of the vehicle was used for the decision. For 1992 and beyond the actual home state of the company was used. In this case, Kansas became the state for determination of reciprocity. As such, the fee was collectible since Kansas had no reciprocity with Michigan.

DISCUSSION

Under the single state registration system enacted in 1991, and effective November 15, 1994, individual states could charge a fee, which does not exceed ten dollars ($10) per vehicle, equal of the fee collected or charged to the carrier as of November 15, 1991. In this particular case, there is no dispute that Michigan did not charge any fee to Yellow Freight for calendar year 1991 due to the reciprocity agreement with other states. It is equally clear that a ten dollar ($10) fee was charged to those carriers registered in states that did not waive the fee for Michigan carriers.

Michigan, in anticipation of the new legislation, through the Public Service Commission, changed its method of determining reciprocity prior to October, 1991. Under its new formula for reciprocity, a carrier's principal place of business

would be used to determine reciprocity rather than the state that licensed the trucks owned by the carrier. In this case, Kansas now became the state to be used in determining reciprocity for Yellow Freight in place of Illinois. As the state of Kansas did not waive fees for Michigan vehicles, a ten dollar ($10) fee per truck was charged to Yellow Freight. This fee was properly paid by the Plaintiff on October 3, 1991, for registration in 1992.

The Defendant has taken the position that while it is true that no fee was charged or collected for 1991, there was a fee in place for 1992 that was charged prior to November 15, 1991. Therefore, Michigan was perfectly within its rights in charging the ten dollars ($10) in 1994 and beyond. Plaintiff, relying on the same language of the statute, believes that since no fee was charged in 1991, the fact that a fee for 1992 was put in place should not allow collection of the fee. The issue to be resolved is to determine the correct manner of interpreting this language.

Under the Interstate Commerce Clause, Federal law supersedes the authority of individual states to regulate interstate commerce. In this regard, the Interstate Commerce Commission has regulatory authority over the implementation of the various acts of congress controlling the smooth flow of commerce between the states. In interpreting the intent of congress, this Court believes it should give great weight to the interpretation of the law applied to the statute by the agency charged with its enforcement. In this regard, this Court believes that the decision by the ICC in its decision in the American Trucking case is dispositive of the issues to be decided here. In American Trucking, the issue herein was specifically raised and decided. The commission held that: Yellow has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991," relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find.

Based upon this interpretation, this Court finds that the fees for 1994 through 1996 were improperly charged and are hereby ordered refunded.

Dated: 3/13/96

/s/
William E. Collette
Circuit Judge

PROOF OF MAILING

I do certify that I have served a copy of the attached opinion and order upon each attorney of record, by placing a copy of same in a sealed envelope, addressed to each, with full postage prepaid thereon and placing said envelope in the United States mail at Lansing, Michigan on 3-14-96.

/s/
Judicial Assistant

STATE OF MICHIGAN

BEFORE THE COURT OF CLAIMS

YELLOW FREIGHT SYSTEM, INC.,

Plaintiff-Claimant, Case No. 95-15706-CM

v Hon. William E. Collette

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF COMMERCE AND ITS DIRECTOR AND MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, RONALD E. RUSSELL AND JOHN L. O'DONNELL,

Defendants-Respondents. /

Attorney for Plaintiff
Ronald J. Mastej (P17195)
EAMES, WILCOX, MASTEJ, BRYANT, SWIFT & RIDDELL
1400 Buhl Building
Detroit, Michigan 48226-3602
Telephone: (313) 963-3750
Fax: (313) 963-8485

Attorneys for Defendants
Don L. Keskey (P23003)
Judith I. Blinn (P26678)
Department of Attorney General
Public Service Division
6545 Mercantile Way, Suite 15
Lansing, Michigan 48911
Telephone: (517) 334-7650
Fax: (517) 334-7655

AFFIDAVIT OF THOMAS R. LONERGAN

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

I, Thomas R. Lonergan, having been duly sworn and deposes state as follows:

1. I am presently and was at all times pertinent to the above action, employed by the Michigan Public Service Commission in the capacity as Director of the Motor Carrier Regulation Division.

2. I have personally reviewed the Plaintiff's Complaint filed in the above action and am familiar with the contents of same.

3. Contrary to the factual allegations contained in Plaintiff's Complaint the following is a true and accurate description of the events which are the subject of the Plaintiff's Complaint:

a. Prior to 1988 the Michigan Public Service Commission had reciprocity agreements with several states and provinces pertaining to fees for trucks in interstate commerce.

b. 347 Public Act 1988 amended the Motor Carrier Act and established a new requirement that the Michigan Public Service Commission begin charging regulatory fees for vehicles of interstate, foreign and interstate exempt motor carriers operated in Michigan.

c. 347 Public Act 1988 was amended by 221 Public Act 1989.

d. Until that time, the State of Michigan had not issued cab card stamps to interstate, foreign and interstate exempt motor carriers.

e. Commencing in the fall of 1989 for the calendar year beginning January 1, 1990, the Michigan Public Service Commission began issuing cab card stamps, commonly referred to as "bingo stamps".

f. Under the above act, Michigan was required to charge vehicles from other states $10.00 for the stamp. However, the act permitted the Commission to enter into reciprocal agreements with other states or provinces of Canada that did not charge vehicles licensed in this state regulatory fees, permitting the waiving of $10.00 fees to vehicles licensed in those provinces or states.

g. On August 2, 1989 Chairman William Long sent a letter to all states and provinces canceling any previous reciprocity agreements.

h. For purposes of the new act, the Michigan Public Service Commission Staff contacted other states and provinces to determine if they were in fact charging a fee to Michigan vehicles.

i. The Public Service Commission made a policy decision not to charge a fee to carriers with vehicles registered in states or provinces which did not charge Michigan-based carriers a fee.

j. Under the above-described system, Yellow Freight which had 3,730 vehicles base plated in Illinois and Indiana, was not charged for those cab card stamps as those states did not charge fees for vehicles based in Michigan. Yellow Freight was charged for five vehicles which were base plated in Oklahoma. (Attachment 1). This system was in effect for calendar years 1990 and 1991.

k. After two years of administration of the cab card stamp program using the system of determining fees and reciprocity waiver based on the state of vehicle registration, it became evident that this system was unduly complex and inefficient to administer. A cab card application could include vehicle registrations in many different states requiring several calculations and the possibility of error in reciprocity waivers. It also became apparent that Michigan was one of very few, and possibly the only, state using this system as opposed to the principal place of business system. Further, work was proceeding on legislation in Washington to mandate a single base state program and this would require a uniform approach by the participating states.

l. The Public Service Commission made a policy decision in 1991 to change to a system utilizing the principal place of business as the basis for fees and reciprocity. This decision was made in early 1991 and the revised renewal applications were mailed to all interstate motor carriers in September of 1991. This clearly pre-dated the effective date for freezing fees and reciprocity, being November 15, 1991.

m. The above changes are reflected in the attached cab stamp application forms. Attachment No. 1 is the renewal for the 1991 cab stamps and indicates in paragraph 8 that the fee schedule is based on the fee charged by the state in which the company's vehicles are commercially base plated. Attachment No. 2 is the renewal form mailed and used in 1991 for the 1992 registration year. This form states that the fee schedule is based on the state or province in which the company is based.

n. Thus, no reciprocity agreements were changed. Rather, for efficiency reasons and to be in compliance with the SSRS the MPSC based reciprocity on the state in which a company was located rather than the states in which the vehicles were base plated.

o. Under the "base plating" system Yellow Freight, with a substantial number of trucks base plated in the states of Illinois and Indiana, did not pay fees due to reciprocity arrangements with those states.

p. After the system was changed basing reciprocity on a company's principal place of business, Yellow Freight had to pay fees as its principal place of business was in Kansas. Michigan had no fee waiver with the State of Kansas. Other motor carriers would have paid less as a result of the change if they were based in a state with which Michigan had a fee waiver.

q. 49 USC § 11506 sets forth the fee systems and states in part:

> Will result in a fee for each participating state that is equal to the fee, not to exceed $10.00 per vehicle, that such state collected or charged as of November 15, 1991;

Pursuant to the above, it was determined that fees would be based on fees collected and charged as of November 15, 1991.

r. In the instance of Yellow Freight that fee was based on the fees charged and collected as of November 15, 1991. (See Exhibit 2). The application form with payment was received on October 3, 1991 as well as payment in full. This established that the Michigan system in place as of November 15, 1991 was the "principal place of business" system and has been continued each year thereafter.

s. The above method of fee collection was made in good faith with the understanding that same was in accord with the newly enacted SSRS which was to become effective on January 1, 1992.

4. At all times during my contacts with the Plaintiff, if any, I acted in good faith, within the scope of my authority and

in my official capacity as a public employee of the State of Michigan and not in my personal capacity.

5. If sworn I can competently testify to the facts set forth in this Affidavit.

Further affiant sayeth not.

/s/
Thomas R. Lonergan, Director
Motor Carrier Regulation Division
Michigan Public Service Commission

Subscribed and sworn to before me this
9th day of October, 1995.

/s/
Pamela A. Cabic, Notary Public
Eaton County, Michigan
My Commission Expires: 2/4/98

INTERSTATE CAB CARD STAMP APPLICATION
Form B
(Authorized by PL 89-170)

Instructions:
- Filing this form is required to request Cab Card Stamps. Failure to file may result in citations by the Michigan State Police.
- Type or Print legibly in ink.
- Please read the instructions printed on the back.

1. Check One:
   _X_ ICC Regulated
   ___ Exempt

2. Date:
   10/17/1990

3. Applicant:
   YELLOW FREIGHT SYSTEM, INC.

4. Address:
   10990 Roe Ave.
   City: Overland Park
   State/Province: Kansas
   Country: Johnson
   Zip/Postal Code: 66207
   Telephone Number: (913) 345-3000

5. Applicant's representative to whom inquiries are to be directed (Name & Title):
   J.S. Upton, Licensing Supervisor

ICC CARRIERS ONLY

6. Type of Authority:
   _X_ Certificate
   ___ Permit
   ___ ETA
   ___ TA

7. ICC Operating Authority No.
   MC 112713

CAB CARD IDENTIFICATION STAMPS

Valid cab card identification stamps are required for the vehicles which you intend to operate within the borders of the State of Michigan. For operations regulated by the Interstate Commerce Commission, the operation of your vehicles is subject to the authority issued to you by the Interstate Commerce Commission. An applicant shall not knowingly permit any other person or organization to use the identification stamps issued or assigned under this application.

8. State law provides that the stamp fee levied on each interstate or foreign motor carrier vehicle licensed in another state or province of Canada, be equal to the annual fee under PL 89-170 charged to a Michigan licensed motor carrier in that state or province. See listing on the attached fee schedule for the fee charged to the state in which your company's vehicles are commercially plated and enter below:

SUMMARY OF FEES

Number of stamps:
3730
5

List each state or province in which vehicles are commercially plated:
Illinois, 1865
Oklahoma, 1865

Cost per Stamp:
-0-
10.00

Totals:
-0-
50.00

Total Stamps Requested:
3735

Total Stamp Fees:
50.00

*Refer to the attached Cab Card Stamp Fee Chart listing.

Under penalty for false statement, I certify that this application is correct, and that I am authorized to file this document. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001: State penalties as prescribed by law.)

Applicant or Authorized Agent Signature: Title:

/s/
J.S. Upton Licensing Supervisor

(Have you attached your payment?)

INTERSTATE CAB CARD STAMP APPLICATION
Form B
(Authorized by PL 89-170)

Instructions:
- Filing this form is required to request Cab Card Stamps. Failure to file may result in citations by the Michigan State Police.
- Type or Print legibly in ink.
- Please read the instructions printed on the back.

1. Application for:
   ___ New (Original Registration)
   _X_ Renewal
   ___ Additional Stamp registration during the year

2. Check One:
   ___ ICC Exempt
   _X_ ICC Regulated – **Enter the type of Authority below:**
      _X_ Certificate
      ___ Permit
      ___ ETA
      ___ TA

3. Date:
   Sept 27, 1991

4. ICC Operating Authority No.
   MC – 112713

5. Applicant:
   YELLOW FREIGHT SYSTEM, INC.

6. Address:
   10990 Roe Ave.
   City: Overland Park
   State/Province: Kansas
   Country: Johnson
   Zip/Postal Code: 66207
   Telephone Number: (913) 344-3048

7. Mailing Address: (Complete only if address is different from No. 4)

8. Applicant's representative to whom inquiries are to be directed (Name & Title):
   J.S. Upton, Licensing Supervisor

CAB CARD IDENTIFICATION STAMPS

Valid cab card identification stamps are required for the vehicles which you intend to operate within the borders of the State of Michigan. For operations regulated by the Interstate Commerce Commission, the operation of your vehicles is subject to the authority issued to you by the Interstate Commerce Commission. An applicant shall not knowingly permit any other person or organization to use the identification stamps issued or assigned under this application.

9. State law provides that the stamp fee levied on each interstate or foreign motor carrier vehicle licensed in another state or province of Canada, be equal to the annual fee under PL 89-170 charged to a Michigan licensed motor carrier in that state or province. See listing on the attached fee schedule for the fee charged to the state in which your company's vehicles are commercially plated and enter below:

   a. State of Provence which is your base of operations:
      Kansas

   b. Number of Stamps Requested:
      3785

   c. Total Stamp Fees *
      $37,850.00

   *Refer to the attached Cab Card Stamp Fee Chart listing.

Under penalty for false statement, I certify that this application is correct, and that I am authorized to file this document. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001: State penalties as prescribed by law.)

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J.S. Upton Licensing Supervisor

(Have you attached your payment?)

§ 14504. Registration of motor carriers by a State

(a) Definitions. In this section, the terms "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Secretary to prove the lawfulness of transportation by motor carrier referred to in section 13501.

(b) General rule. The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 [49 USCS §§ 13501 et seq.] and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

(c) Single State registration system.

(1) In general. The Secretary shall maintain standards for implementing a system under which--

(A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139 [49 USCS §§ 13901 et seq.];

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) Specific requirements.

(A) Evidence of federal registration; proof of insurance; payment of fees. Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of

this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part [49 USCS §§ 13101 et seq.]--

(i) to file and maintain evidence of such Federal registration;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system. The standards of the Secretary--

(i) shall require that the registration State issue a receipt, in a form prescribed under the standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or

identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that--

(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

(II) minimizes the costs of complying with the registration system; and

(III) results in a fee for each participating State that is equal to the fee, not to exceed $ 10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

(C) Prohibited fees. The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

(D) Limitation on participation by States. Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

478.7 Motor carrier engaged in interstate or foreign transportation of property for compensation; registration and vehicle fees; filing record of authority; approval of application for registration of exempt operations; annual fee; reciprocal agreement; disposition of fees.

Sec. 7.

(4) The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.